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Cooperative Capital Markets Regulatory System

BY E-MAIL: comment@ccmr-ocrmc.ca

RE: Comments regarding the proposed Capital Markets Stability Act ("CMSA")

Dear Sirs/Mesdames:

TMX Group Limited (**"TMX Group"**) appreciates the opportunity to comment on the proposed Cooperative Capital Markets Regulatory System (**"CCMRS"**) and the related proposed CMSA. We were pleased to see that comments made in response to the earlier CMSA proposal in fall 2014 were carefully considered and that amendments have been made to the CMSA to address many issues. There are, however, a number of areas where, even with the amendments, we continue to have concerns with respect to duplicative, and possibly conflicting, regulation, particularly with respect to systemically important designations and record collection. Below we have set out a few suggested changes which would address these issues.

TMX Group continues to be supportive of efforts to make Canada's capital markets more efficient and brings a unique perspective to the CCMRS comment process through our central and multifaceted role in Canadian capital markets. TMX Group's key subsidiaries operate cash and derivatives markets for multiple asset classes, including equities, fixed income and energy. Toronto Stock Exchange, TSX Venture Exchange, Alpha Exchange, The Canadian Depository for Securities Limited, Montreal Exchange, Canadian Derivatives Clearing Corporation, Natural Gas Exchange, BOX Options Exchange, Shorcan, Shorcan Energy Brokers, TSX Trust and other TMX Group companies provide listing markets, trading markets, clearing facilities, data products and other services to the global financial community.

Systemically Important Designations – Products and Practices

TMX Group is pleased to see that the revised proposal demonstrates regulators' recognition of the potential for duplicative regulation under the CMSA and an intention to minimize this. We were pleased that under the revised CMSA, clearing agencies and marketplaces will no longer be candidates for a systemic importance designation as regulators have moved towards focusing on regulation of products and practices rather than entities. Because provincial securities regulators and the Bank of Canada still regulate at the entity level, however, there is still considerable potential for duplicate regulation under the revised approach. And while the Capital Markets Regulatory Authority (the **"Authority"**) will now be required to consider whether and how products, practices or benchmarks are already regulated, with respect to certain of these items, there is no commitment to actually ensure that regulation will not be duplicative.

As noted, clearing agencies and marketplaces are already regulated under provincial securities laws and will be regulated under the proposed Capital Markets Act (**"CMA"**) and regulations. Specifically, clearing agencies are regulated under National Instrument 24-102 Clearing Agency Requirements (**"NI 24-102"**) and, with respect to those that are systemically important, under Bank of Canada regulatory oversight agreements. Marketplaces, including exchanges, are regulated under National Instrument 21-101 Marketplace Operations (**"NI 21-101"**) and National Instrument 23-101 Trading Rules (**"NI 23-101"**). Exchanges and clearing houses are also regulated through recognition orders containing additional terms and conditions, with some entities having recognition orders from multiple provincial securities regulators.

NI 24-102 requires compliance with the CPMI-IOSCO Principles for Financial Market Infrastructures (the **"PFMIs"**) which cover many of the regulatory areas set out in sections 21 (products) and 23 (practices) of the CMSA, including, through Principles 2 to 10 and 23 requirements relating to governance, comprehensive risk management, credit risk, collateral, margin, liquidity risk, settlement finality, money settlements, physical deliveries, disclosure of rules, key procedures and market data (which covers CMSA section 21(b), (c) and (g) to (k) and section 23(a) to (f)). NI 24-102 incorporates these principles and further builds on them. Further, any amendments to rules, operating procedures, user guides, manuals and other documentation governing or establishing the rights, obligations and relationships among a clearing agency and its participants in relation to clearing and settlement must be provided to provincial securities regulators and, if systemically important, the Bank of Canada.

NI 21-101 includes provisions relating to CMSA sections 21(a) – (d) and 23(a) – (c) through Part 5 (marketplace requirements), Parts 7 and 8 (information transparency requirements), Part 10 (transparency of marketplace operations), Part 12 (marketplace systems), and Part 13 (clearing and settlement). NI 23-101 also addresses those issues through Part 11 (audit trail requirements). Recognition orders address governance issues.

As a result of the above, clearing agencies and exchanges are highly regulated with respect to all aspects of their business, including their products and their related rules, and practices they may engage in. All aspects of sections 21 and 23 of the CMSA that would impact an exchange or clearing agency either are or could be covered by the existing regulations and recognition orders. We would submit that to the extent any further regulation of exchange or clearing agency products or practices are necessary, this could be done through the CMA or recognition orders which the Authority will also be overseeing. Adding another source of law governing how a clearing agency or exchange is regulated (which would be the effect of creating regulations relating to their products or practices) complicates doing business by adding an additional unnecessary layer of regulation on top of the multiple existing regulations.

As we noted in our comment letter dated December 2014, the US and the European Union have applied a coordinated regulatory approach to systemic risk that minimizes regulatory overlap and explicitly incorporates and recognizes the powers of existing regulators. In the United States, the Financial Stability Oversight Council (**"FSOC"**) is the systemic risk regulator and is charged with monitoring systemic risk and coordinating responses. It acts through existing regulators rather than creating an additional layer of regulation. Similarly, we believe here that regulations relating to products and practices of clearing agencies and exchanges can be regulated through the existing regulators and regulations which already cover all aspects of the types of regulations that would be proposed under the CMSA. In Europe, the European Systemic Risk Board (the **"ESRB"**) is responsible for macro-prudential oversight, but itself has no legal personality. The ESRB issues warnings, and where it deems necessary, recommendations either of a general or a specific nature to the European Union as a whole, to one or more Member States, or to one or more of the national or other supervisory authorities. It also monitors compliance with such warnings and recommendations. Recipients of recommendations (i.e., other regulators) must act on the recommendations or provide an adequate justification in case of inaction. Similarly, here, should the Authority find systemic risk that it believes needs to be regulated and such regulations should apply to clearing agencies and exchanges, it could notify the authorities that oversee such entities (which often will include the Authority pursuant to its CMA powers) to recommend that they regulate them accordingly under the many instruments that already govern these entities.

With respect to exchange traded and cleared products, the regulators currently overseeing exchanges and clearing agencies already have a full picture with respect to trading and clearing on such venues and, through recognition orders and rule approval rights, have the jurisdiction to impose the types of requirements listed in the CMSA. Given this, we would submit that exchange traded and cleared products should be carved out of these sections. While we believe this would be the best approach to address the issue, an alternative would be to add a statement at the end of sections 21 and 23 that the Authority will use its best efforts not to prescribe requirements, prohibitions and restrictions that duplicate or conflict with those already in force.

With respect to subsections 21(a) and (b), we understand that the primary purpose may be that the Authority retain jurisdiction to designate certain products as being subject to mandatory clearing or trading. We would submit then that the wording of these sections be amended to make this intention clearer and reduce possible duplicative regulation. Subsection 21(a) could be amended to read "requirements that they be subject to mandatory trading on a trading facility" and subsection 21(b) could be amended to read "requirements that they be subject to mandatory clearing and settlement." If the intention of the CMSA is to complement existing capital markets regulatory framework, then this new language would clarify that the CMSA is only trying to fill a possible gap, and it is not intended to create new regulations for exchanges and clearing houses that are already heavily regulated.

Systemic Importance Designation - Benchmarks

Section 18 permits the Authority to designate a benchmark as systemically important if, in the Authority's opinion, impairment to the benchmark's reliability or a loss of public confidence in its integrity or credibility could pose a systemic risk related to capital markets. Concerns regarding systemic risk stemming from benchmarks are generally due to the possibility of their manipulation, which is a greater risk when benchmark inputs are derived from submissions or subjective sources in relatively opaque, and illiquid markets. By contrast, equity indices are based on transparent market data that is produced by exchanges which are subject to extensive regulatory oversight. While TMX Group strongly supports adherence by benchmark administrators to international principles that foster integrity, transparency and efficiency of financial and commodity benchmarks, we do not believe that the objective of ensuring the integrity of benchmarks requires them to be designated as systemically important by the Authority. We would submit therefore that among the other factors listed in section 18(2) that the Authority must consider in making its decision, transparency of the data used in calculating the benchmark's values should be added to the list.

Record Collection

TMX Group was pleased to see that with respect to record collection, regulators will now consider to what extent recordkeeping is already required. Related to the concerns raised above, we believe this would be more effective if a statement were added to the end of sections 9(2) and 10(2) stating that the Authority and the Chief Regulator will use its best efforts to obtain the records and information from another source if reasonably practicable. As currently drafted, while the Authority may research the extent to which records may be otherwise available, there is no commitment that the Authority will act on this knowledge.

TMX Group appreciates the opportunity to provide comments with respect to the CMSA. We hope that you will consider our concerns and suggestions and would be happy to discuss these at greater length. Please feel free to contact Jennifer Oosterbaan, Legal Counsel, TMX Group at Jennifer.oosterbaan@tmx.com if you have any questions regarding our comments.

Respectfully submitted,

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